

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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SEMICONDUCTOR ENERGY  
LABORATORY CO., LTD.,

ORDER

Plaintiff,

09-cv-01-bbc

v.

SAMSUNG ELECTRONICS CO., LTD.,  
S-LCD CORPORATION, SAMSUNG  
ELECTRONICS AMERICA, INC., and  
SAMSUNG TELECOMMUNICATIONS  
AMERICA, LLC,

Defendants.

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In this patent infringement lawsuit, plaintiff Semiconductor Energy Laboratory Company, Ltd. has requested the construction of five claim terms and defendants Samsung Electronics Company, Ltd., S-LCD Corporation, Samsung Electronics America, Inc. and Samsung Telecommunications America, LLC have requested the construction of 11 claim terms. On May 1, 2009, Magistrate Judge Stephen L. Crocker entered an order setting out this court's rules for requesting construction of claim terms before summary judgment. The order stated "[i]t is the party's burden to persuade the court that construction of each specified term is necessary to resolve a disputed issue concerning infringement or invalidity."

Prelim. Pretrial Conf. Order, dkt. #37, at 2. Although both parties submitted lengthy initial and response briefs arguing their respective positions on the construction of certain claim terms, neither met its burden with respect to the need for claims construction.

In an attempt to explain the need for claim construction, plaintiff included a table with only vague phrases, such as “will resolve infringement dispute,” “clarify uncommon term of art for fact finder,” “will reduce scope of prior art for validity analysis.” Plt.’s Br., dkt. #100, at 13, 58 and 60. Although defendants provided complete sentences, the closest they came to complying with the order was asserting without explanation that claim construction will “inform the parties” about which of the hundreds of the accused products satisfy the claim limitation in question and will “potentially narrow the issues” for trial. Dft.’s Br., dkt. #101, at 59, 64 and 66.

The reason for the order is not to require parties to parrot its language before the court construes claim terms; it is to avoid devoting judicial resources to the issuance of advisory opinions on the construction of claim terms about which the parties have no concrete dispute. Claims construction is not an academic exercise. As much as the parties may hate to show their hands at this early stage, they must do so if they hope to seek the benefit of claim construction before filing motions for summary judgment. Because the parties have disregarded the order and failed to demonstrate the basis for requesting construction of the terms they dispute, their motions requesting claim construction will be denied.

Of course, this ruling does not mean they are forever barred from seeking construction of claim terms. The parties are free to seek construction of claim terms when they file motions for summary judgment, at which time terms will be construed to the extent necessary to resolve the parties' disputes on issues of infringement and invalidity. The parties have lost only the benefit of receiving some answers before then.

ORDER

IT IS ORDERED that plaintiff Semiconductor Energy Laboratory Company, Ltd.'s motion for claims construction, dkt. #97, and the motion of defendants Samsung Electronics Company, Ltd., S-LCD Corporation, Samsung Electronics America, Inc. and Samsung Telecommunications America, LLC requesting claims construction, dkt. #99, are DENIED. No claims construction hearing will be held on November 20, 2009.

Entered this 4<sup>th</sup> day of November, 2009.

BY THE COURT:

/s/

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BARBARA B. CRABB  
District Judge